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17 Director of the San Francisco Department of  
18 Elections

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

19 VOTING RIGHTS DEFENSE PROJECT,  
20 AMERICAN INDEPENDENCE PARTY,  
21 CLARA DAIMS, and SUZANNE  
22 BUSHNELL,  
23 Plaintiffs,

24 vs.

25 ALEX PADILLA, in his official capacity as  
26 Secretary of State and an indispensable party,  
27 TIM DEPUIS, in his official capacity as chief  
28 of the Alameda County Registrar of Voters,  
JOHN ARNTZ, in his official capacity as  
Director of the San Francisco Board of  
Elections, and DOES I-X,

Defendants.

Case No. 16-cv-02739-WHA

**[PROPOSED] ORDER GRANTING  
DEFENDANT SAN FRANCISCO DIRECTOR  
OF ELECTIONS JOHN ARNTZ'S MOTION  
TO DISMISS**

Hearing Date: August 18, 2016  
Time: 8:00 a.m.  
Judge: Hon. William H. Alsup  
Place: Courtroom 8, 19th Floor

After careful consideration of all of the papers, the court file and argument of counsel, the Court grants the motion to dismiss Plaintiffs' Amended Complaint ("Complaint") filed by Defendant John Arntz, the Director of San Francisco's Department of Elections ("Department"):

(1) The Complaint is moot because all of the relief sought by Plaintiffs was to stop supposed harms from occurring at the election on June 7, 2016. Because that election has already occurred, the action is moot.

(2) Plaintiffs lack standing. The only two Plaintiffs with any alleged connection to San Francisco are Clara Daims and Suzanne Bushnell. Their alleged harm was uncertainty about whether they could vote in the election. This was never a cognizable injury under Article III, but even if it was, the anticipated harm never occurred, as these Plaintiffs voted in the election in the primary of their choice.<sup>1</sup> As such, they lack standing to continue to pursue this lawsuit and the lawsuit is moot.

(3) Even if the Court could reach the merits of Plaintiffs' claims, they all fail. The Complaint seeks mandamus relief under 28 U.S.C section 1361, but as the Court has already ruled, that statute, by its plain language, applies only to federal officials. Because none of the defendants are federal officials, Plaintiffs cannot seek relief under this statute.

(4) Plaintiffs seek relief under two provisions of the Voting Rights Act, but none of the allegations in the Complaint concern voter registration (as required by Section 10101(a)(2)(A)), nor does the Complaint allege that there has been a material omission on any act requisite to voting (as required by Section 10101(a)(2)(B)).

(5) The Complaint alleges that the Department violated the First and Fourteenth Amendment, but as the Court noted at the hearing, there are no cases holding that treating NPP and non-NPP voters differently (even assuming there is evidence of such treatment) violates the Constitution.

DATED:

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HONORABLE WILLIAM A. ALSUP  
UNITED STATES DISTRICT COURT JUDGE

<sup>1</sup> The Court grants the Department's request for judicial notice of these facts.